

REMARKS

Initially, Applicant expresses appreciation to the Examiner for the courtesies extended by the Examiner during the recent telephonic interview of March 7, 2007. The amendments and remarks made by this response are consistent with the proposals and discussions presented during the interview.

By this paper, claims 18, 20, 21, 29-31 have been amended and new claim 32 has been added, such that claims 18-32 remain pending and of which claims 18, 29, 30 and 31 are the independent claims at issue.

In the Office Action mailed December 14, 2006, claims 18-31 were considered and rejected under 35 USC §112 and 35 U.S.C. §103(a).¹ Claims 29, 31 were also rejected under 35 U.S.C. §101 for purportedly being directed to non-statutory subject matter.

With regard to the §112 rejections, it will be noted that a new substitute specification is being filed with this paper and which addresses the new matter objections previously raised by the Examiner. It will also be noted, however, that several portions of the previous substitute specification that were apparently being objected to for containing new matter (presumably because of underlining of the text in the Specification by the previous and *pro se* Applicant), was actually not new matter. This error has been corrected by the current substitute specification. The new substitute specification also provides new paragraph numbering for the Application, as no paragraph numbering was previously provided. These new paragraph numbers will be referred to when support in the Specification is referenced with regard to the scope of the pending and amended claims.

As discussed with the Examiner, the present invention is generally directed to embodiments for both selecting and presenting information to a user through an affinity based interface that includes interactive character personas. The method recited in claim 18, for example, includes providing a plurality of interactive interface characters corresponding to an affinity based categorization. The interface characters are interactive insomuch as they are enabled to engage with the viewer in interactive dialog. A viewer selects one of the interface

¹ Claims 18 – 31 were rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al. (US 6,088,722) hereinafter Herz in view of Bingham et al. (US 5,79,298) hereinafter Bingham. Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

characters. These characters are then used to filter the content that is ultimately presented to the viewer. The interface character is also used to provide the actual presentation of the content to the viewer.

The only other independent method claim, Claim 30, is directed to a similar embodiment to that recited in Claim 18, except, as recited in Claim 30, the interface characters are recited at interface character personas that are already associated with a respective domain of pre-selected broadcast content.

Claims 29 and 31 are directed to computer program products for implementing the method recited in claims 18 and 30.

Initially, with regard to the §101 rejections, it will be noted that the current specification clearly supports the computer program product claim embodiments, including, but not limited to the disclosure found in paragraph 59. (See also paragraphs 59-86 and the corresponding Figures). Accordingly, inasmuch as the claims are supported by the Specification and inasmuch as the computer program product claims are clearly directed to statutory subject matter, Applicant respectfully submits that the §112 and §101 rejections to claims 29-31 are now moot.

It will also be noted that the other §112 rejections are moot in view of the submission of the new substitute specification which clearly does not introduce new matter and which clearly supports the claims. Support in the specification for the claims, includes, but is not limited to the disclosure in paragraphs 94-98. (See also the disclosure in paragraphs 30-32, 36, 59, 102, and 94-111 and the corresponding Figures).

Now with regard to the substantive rejections, it will be noted that Herz and Bingham are the only references being used to reject the claims. Applicant respectfully submits, however, that the pending claims (18-31) are neither anticipated by, nor made obvious by, the teachings of Herz and Bingham. In particular, Applicant respectfully submits that Herz and Bingham, even when combined, do not teach each and every element recited in the claims. Applicant also submits that there is no motivation in the art for combining Bingham and Herz into any embodiment that would read on the claims.

As previously noted, Herz generally discloses embodiments for generating virtual channels that display content identified as matching a recipient's profile. This is done through the use of an agreement matrix between a recipient profile and profiled content. In particular, the "agreement matrix...matches the customer's preferences and the contents of the data sources."

(Col. 9, ll. 55-56). The customer's preferences or profile is based on various customer input, demographic, and historical data (Col. 12). The profile of the content being matched with the customer's interests is based on various known characterizations and attributes of broadcast media (Col. 11). A number of virtual channels are then created for the customer based on the customer's profiles and for presenting the content matching their interests. (Col. 48, ll. 18-35).

Bingham, on the other hand, discloses embodiments for identifying a user's preferences through the selection of graphical metaphors, such as characters or display objects. As described, the user looks at the displayed characters (which are each associated with different personality traits) and tries to decide which characters they are the most similar to. Various question answer sessions can also be used to facilitate this process. The user can also rank the characters/personalities to obtain a blend of characters which can then be automatically processed to identify a set of parameters that define user preferences or traits. (Abstract, Cols. 3-4).

While Herz generally deals with creating customized virtual channels to match user interests and while Bingham generally deals with identifying user preferences through the selection of personas, the combined teachings of Herz and Bingham still fail to make obvious the claimed embodiments. For example, with regard to independent Claim 18, Herz and Bingham clearly fail to disclose or suggest any embodiment that includes BOTH that (1) the content identified for presentation to the user is scanned and filtered according to affinity based characteristics that are associated with a selected and *interactive* interface character AND that (2) the interactive interface character is subsequently used to present the filtered content to the viewer. With regard to independent claim 30, the combined art also fails to teach or suggest, in combination with the other claim elements, any embodiment that would include the pre-association of an interface character persona with a respective domain of pre-selected broadcast content. This is particularly true when considering that the selected interface character persona comprises an interactive character persona that is associated with a chat mechanism that enables the interactive character persona to participate in an interactive chat dialog with the viewer.

The Examiner has suggested that it would be obvious to modify Herz to use Bingham's pre-defined characters to represent choices in profile definitions. (OA page 5). However, even if this were true, for argument sake, this still fails to render the claims obvious. In particular, no reference has been made to any disclosure in Bingham or Herz that would teach or suggest that

any characters are interactive or that they are configured for entering into chat dialogs with the viewers or that they are used to *present* the content to the viewer. Instead, the Herz and Bingham references, even when combined, can at most ONLY be found to provide a way for identifying user profiles and the content considered relevant to those profiles, or, in other words, for selecting appropriate content to provide to the users.

The cited references clearly fail, even when combined, to teach or suggest any method for **presenting** content to a user with an interactive character (let alone a same character as the one that was used to identify a user profile). Infact, of the cited art, only Herz discloses any method for presenting content. The method disclosed by Herz, however, comprises the use of Virtual Channels, which are clearly distinguished from the characters of Bingham that are used to identify a user profile, and which are even more clearly distinguished from the interactive characters recited in the claims and that are configured for engaging in chat with the viewers of the content.

Again, as mentioned above, Bingham's characters, which are the only characters being referenced in the prior art, are ONLY used to identify user profiles. The Bingham characters are clearly not disclosed as providing any sort of interactive interfacing for chatting with the users or for making the presentation of any selected content to the users.

Although it is clear that the characters in Bingham fail to provide any presentation of content to viewers, the Examiner has nonetheless suggested in the last action that Bingham interface character have unique presentation styles and would be expected to speak differently and that they provide dialogs for interactions with the characters, even corresponding specifically to the content being displayed to a viewer. (See page 6 of the Office Action).

Applicants strongly disagree. In fact, having reviewed Bingham several times, Applicant is entirely unaware of which portions of Bingham the Examiner is relying on for teaching the foregoing claim limitations or, for that matter, any teachings related to the presentation of information to a user or the interactions of the characters with the users. Accordingly, Applicant respectfully requests that the Examiner kindly point to the specific lines in Bingham that are being relied upon for these teachings, as no such references were provided in the last Action.

Applicant also kindly requests that the Examiner clarify the rationale behind the rejections being made on Page 6 of the Office Action, where it is asserted that "It is fully possible that...." the art could be modified to display an interface character with the filtered

content. In particular, it is not clear whether the Examiner is relying on Official Notice. It is also unclear what the motivation for the purported combination is or where it is supported in the cited art. The reason for this request and for the confusion is that the MPEP makes it clear that the motivation for making a combination must come from the references themselves, not the Applicant's own application, otherwise such a combination represents impermissible hindsight. In particular, as stated by the MPEP § 2143, "The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in application's disclosure."²

In the current rejection, it appears as though the Examiner is suggesting that it would be possible to modify Herz to simultaneously display a character (such as Bingham's) with the programming content displayed in Herz's virtual channels. However, it is not clear why there would be any motivation in the art for doing this, particularly since the characters of Bingham are only used for identifying user profiles.

The Examiner does suggest that this would enable a user to access Bingham characters to pick something else while previous programming plays in another window. However, this adds ambiguity to the rejection and does not appear to provide the necessary motivation for such a modification. In particular, it is unclear how accessing the Bingham characters would enable a user to pick something else, unless the user picked a different character than the one originally used to select the displayed programming. However, if this were the case, then the original and first selected character would presumptively not even be displayed, which would thereby prevent the character from being displayed with the content and which is required by the claims. Furthermore, it is not clear why there would even be a motivation (particularly within the art) for enabling a user to pick new characters while simultaneously watching particular content. Again, Applicant respectfully requests that the Examiner point to the passage(s) in the art that are being relied upon for any such assertion or motivation so that Applicant will have a fair opportunity to respond to the Examiner's rejections.

² Applicants remind the Examiner that the "FACT THAT THE CLAIMED INVENTION IS WITHIN THE CAPABILITIES OF ONE OF ORDINARY SKILL IN THE ART IS NOT SUFFICIENT BY ITSELF TO ESTABLISH *PRIMA FACIE* OBVIOUSNESS." MPEP § 2143.01. In fact, "A statement that modifications of the prior art to meet the claimed invention would have been "well within the ordinary skill of the art at the time the claimed invention was made" because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references." MPEP 2143.01

The Examiner also rejects many of the dependent claims without specifically pointing out how the art teaches or suggests what is claimed. For example, with regard to claims 27 and 28, the Examiner merely states "The characters are then used in providing notification to the viewer" (claim 28....[and] The content will be 'at least one of broadcast content or Internet content' (claim 27)." However, it is entirely unclear whether the Examiner is suggesting the art teaches these limitations, whether the Examiner is relying on Official Notice, or whether the Examiner is merely restating the claim language. One reason for this confusion is that there are no references to any particular lines in the cited art that teach these claim elements.

The cited art also fails to disclose or suggest the embodiments recited in many of the other dependent claims, such as, for example, the embodiments in which the interface character exhibits interactive qualities, such as a unique presentation style (claim 19), a unique style of speech (claim 20) or provides dialog to the viewer (claim 21) corresponding to the displayed content (claim 22) and in response to viewer questions (claim 23). The cited art also fails to disclose or suggest that the content is filtered at least in part according to dialogs between the interface character and the viewer (claim 24), or that the dialogs presented by the interface character include a combination of pre-scripted and live chat dialogs (claim 25), or that the content is displayed simultaneously with the interface character (claim 26) and so forth.

The cited art also fails to teach or suggest that any of the characters have selectable features, that when selected initiate a dialog between the character and a viewer (claim 21).

Finally, Applicant notes the last paragraph of Page 7 of the Office Action states that "applicant provides a number of traversals...but without any substantive line of reasoning." With regard to this assertion, Applicant points out that there were actually no traversals presented in the last response, inasmuch as none of the pending claims were even rejected at that point in time. In particular, all of the claims considered in the last office action were only being considered for the first instance, as they had just newly been added. Furthermore, even if the Applicant had traversed any existing rejections, Applicant also points out that it is a relatively difficult proposition to traverse a rejection with a substantive line of reasoning when it is unclear which portions of the cited art are even being relied upon in making a rejection. For at least this reason, Applicant is specifically requesting that the Examiner point to the lines in the cited art that are being relied upon in rejecting the claims (including the dependent claims), as well as for any purported motivations relied upon in combining the art, so that the Applicant can have a fair

opportunity to respond and so that the Applicant can 'specifically address and provide substantive lines of reasoning for traversing the rejections.'

In view of at least the foregoing reasons, Applicants respectfully submit that the pending claims are distinguished from the cited art and such that the other specific rejections made with respect to the cited art in the previous Office Action to the claims are now moot and do not, therefore, need to be addressed individually at this time.³

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 30th day of March, 2007.

Respectfully submitted,



RICK D. NYDEGGER
Registration No. 28,651
JENS C. JENKINS
Registration No. 44,803
Attorneys for Applicant
Customer No. 47973

JCJ:gc
CRB0000004975V001

³ It will be appreciated, however, that this should not be construed as Applicants acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicants reserve the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicants specifically request that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.